



Billing Code 7510-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1834, 1841, 1846, 1851 and 1852

RIN 2700-AE01

NASA FAR Supplement Regulatory Review No. 1

AGENCY: National Aeronautics and Space Administration

ACTION: Proposed rule.

SUMMARY: NASA is updating the NASA FAR Supplement (NFS) with the goal of eliminating unnecessary regulation, streamlining overly burdensome regulation, clarifying language, and simplifying processes where possible. This proposed rule is the first in a series and includes updates and revisions to five NFS parts. On January 18, 2011, President Obama signed Executive Order 13563, Improving Regulations and Regulatory Review, directing agencies to develop a plan for a retrospective analysis of existing regulations. The revisions to this rule are part of NASA's retrospective plan under EO 13563 completed in August 2011.

DATES: Interested parties should submit comments to NASA at the address below on or before [Insert 60 days from Federal Register Publication Date] to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700-AE01 via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio via e-mail at leigh.pomponio@NASA.gov. NASA's full plan can be accessed at: http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA, Office of Procurement, e-mail: leigh.pomponio@NASA.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The NASA FAR Supplement (NFS) is codified at 48 CFR 1800. Periodically, NASA performs a comprehensive review and analysis of the regulation, makes updates and corrections, and reissues the NASA FAR Supplement. The last reissue was in 2004. The goal of the review and analysis is to reduce regulatory burden where justified and appropriate and make the NFS content and processes more efficient and effective, faster and simpler, in support of NASA's mission. Consistent with Executive Order 13563, Improving Regulations and Regulatory Review, NASA is currently reviewing and revising the NFS with an emphasis on streamlining and reducing burden. Due to the volume of the regulation, the revisions to the regulation will be made in increments. This proposed rule is the first of three expected rules which together will constitute the NFS update and reissue. This rule includes revisions to parts 1834, 1841, 1846, 1851, and 1852 of the NFS. Further, this rule provides notice that no regulatory changes will be made to parts 1814, 1815 (exclusive of subpart 1815.4), 1818, 1822, 1824, and 1843.

NASA analyzed the existing regulation to determine whether any portions should be modified, streamlined, expanded, or repealed. Special emphasis was placed on identifying and eliminating or simplifying overly burdensome processes that could be streamlined without jeopardizing Agency mission effectiveness. Additionally, NASA sought to identify current regulatory coverage that is not regulatory in nature, and to remove or relocate such coverage to internal guidance. In addition to substantive changes, this rule includes administrative changes necessary to make minor corrections and updates. Specifically, the changes in this rule are summarized as follows:

Part 1815: No regulatory changes to Part 15 but note that two corresponding clauses are revised. The pre-proposal clause at 1852.215-77 is revised to add additional information on security information required for attendance at conferences at NASA field locations. The clause entitled Proposal Page Limitations at 1852.215-81 is revised to clarify the maximum acceptable proposal page counts.

Part 1834:

1. Administrative changes are made to policy on Earned Value Management System which correct nomenclature and web site references.

2. In Notice of Earned Value Management System provision at 1852.234-1, a requirement is added for offerors to provide a matrix that correlates each guideline in ANSI/EIA 748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; the rule also updates website and references in the provision.

3. In Earned Value Management System clause at 1852.234-2, administrative changes are made to correct nomenclature and add a website reference.

Part 1841: Subpart 1841.5—Solicitation Provision and Contract Clauses, is deleted in its entirety. Clause text at 1852.241-70, Renewal of Contract, is removed. The prescription and clause are removed because the clause at FAR 52.217-9 is sufficient to provide for a contract extension or renewal. A NASA-unique clause to address extension and renewal in a utility contract is not necessary.

Part 1846:

1. Subpart 1846.6--Material Inspection and Receiving Reports, is revised to align with DFAR Appendix F, facilitating comparison of NASA and DoD practices and procedures with regard to DD Form 250, especially for contractors doing business with both agencies. Administrative changes are also made to this subpart to clarify DD Form 250 preparation instructions.

2. The clause 1852.246-72, Material Inspection and Receiving Report, is revised slightly to clarify distribution requirements.

Part 1851: Section 1851.102-70, Contractor acquisition of filing cabinets, is deleted because it is no longer relevant or necessary.

Part 1852: Changes to clauses are discussed above according to corresponding NFS part.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it mainly clarifies or updates existing regulations. In one instance, it

adds new requirements to the Earned Value Management System Clause, but that clause is rarely applicable in contracts with small businesses. In several instances, this rule deletes requirements, but not to the extent that small entities would be significantly impacted.

D. Paperwork Reduction Act

The proposed rule contains a new information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35). The collection is at 1852.215-77(c), Pre-proposal/pre-bid conference, wherein attendees at pre-proposal or pre-bid conferences will be required to submit personal identity information. NASA invites public comments on the following aspects of the proposed rule: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Security Checks for Attendance at Pre-proposal Conferences. NASA FAR Supplement 1852.215-77, Pre-proposal/Pre-bid Conference

Type of Request: New collection

Number of Respondents: 30

Responses per Respondent: 12

Annual Responses: 360

Average Burden per Response: 0.25 hours.

Annual Burden Hours: 90.

Needs and Uses: This information collection requires contractors to supply personal identity information for attendees at pre-proposal conferences that are held at NASA facilities. The information includes, but is not limited to name, social security number, place of birth, and citizenship. NASA will utilize the information to perform security checks for entrance to NASA facilities. Without the collection of this information, NASA will be unable to permit entrance to NASA facilities for attendance at pre-proposal conferences.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to NASA, Attn: Leigh Pomponio leigh.pomponio@NASA.gov. Comments can be received up to 60 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to NASA, Attn: Leigh Pomponio, 300 E Street, SW, Washington, DC 20546-0001.

List of Subjects in 48 CFR 1834, 1841, 1846, 1851, and 1852.

Government procurement

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Accordingly, 48 CFR Parts 1834, 1841, 1846, 1851, and 1852 are proposed to be amended as follows:

PART 1834 – MAJOR SYSTEM ACQUISITION

1. The authority citation continues to read as follows:

AUTHORITY: 42 U.S.C. 2473(c)(1).

1834.201 [Amended]

2. Amend section 1834.201 to read as follows:

- a. Amend paragraph (a) introductory text by removing the word “acquisitions” in the first sentence and adding in its place the word “contracts”.
- b. Amend paragraph (a)(3) by adding the phrase “Earned Value Management” before the acronym EVM and adding parentheses around EVM.
- c. Amend the first sentence of paragraph (b), by removing the phrase “earned value management” with “EVM” and adding the phrase “a schedule management system” with “an Integrated Master Schedule (IMS)”.
- d. Amend paragraph (d) by adding the phrase “and the applicable NASA Center EVM Focal Point (<http://evm.nasa.gov/council.html>)” between “office” and “in determining”.

e. Amend paragraph (e) by removing “American National Standards Institute/Electronics Industries Alliance Standard” and the parentheses around the existing acronym ANSI/EIA.

f. Add paragraph (f).

The addition reads as follows:

1834.201 Policy.

(f) As a minimum, and in accordance with NPD 7120.5, requirements initiators shall ensure that EVMS monthly reports are included as a deliverable in the acquisition package provided to the procurement office for implementation into contracts where EVMS applies. Additionally, the acquisition package shall include a Contract Performance Report (CPR), IMS and a Work Breakdown Structure (WBS) and the appropriate data requirements descriptions (DRDs) for implementation into the contract.

1834.203-70 [Amended]

3. Amend section 1834.203-70 by removing “1834.201 (a)(3)” and adding in its place “1834.201 (c)” in the first sentence.

PART 1841 – ACQUISITION OF UTILITY SERVICES

4. The authority citation for this section continues to read as follows:

AUTHORITY: 42 U.S.C. 2473(c)(1).

Subpart 1841.5 [Removed and Reserved] .

5. Remove and reserve Subpart 1841.5

PART 1846 – QUALITY ASSURANCE

6. The authority citation continues to read as follows:

AUTHORITY: U.S.C. 2473(c)(1).

7. Add Subpart 1846.1 to read as follows:

Subpart – 1846.1 General

1846.101 Definitions.

"Counterfeit goods" means an item that is an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source.

"Legally authorized source" means the current design activity or the original manufacturer or a supplier authorized by the current design activity or the original manufacturer to produce an item.

1846.102 Policy.

(f) See NPR 8735.2, Section 2.1, concerning quality assurance for critical acquisition items. Generally, the quality assurance requirements set forth in the NPR for critical acquisition items are not allowed under Part 12 procedures. See FAR 12.208.

8. Section 1846.670-1 is revised to read as follows:

1846.670-1 General.

This subpart contains procedures and instructions for use of the DD Form 250, Material Inspection and Receiving Report (MIRR) , (DD Form 250 series equivalents, and commercial shipping/packing lists used to document Government contract quality assurance (CQA).

9. Section 1846.670-2 is revised to read as follows:

1846.670-2 Applicability.

(a) This subpart applies to supplies or services acquired by or for NASA when the clause at 1852.246-72, Material Inspection and Receiving Report, is included in the contract.

10. Section 1846.670-3 is revised to read as follows::

1846.670-3 Use.

(a) The DD Form 250 is a multipurpose report used for --

- (1) Providing evidence of CQA at origin or destination;
- (2) Providing evidence of acceptance at origin or destination;
- (3) Packing lists;
- (4) Receiving;
- (5) Shipping; and
- (6) Contractor invoice support.

(b) Do not use MIRRs for shipments--

- (1) By subcontractors, unless the subcontractor is shipping directly to the Government; or,
- (2) Of contract inventory.

(c) The contractor prepares the DD Form 250, except for entries that an authorized Government representative is required to complete. The contractor shall furnish sufficient copies of the completed form, as directed by the Government Representative.

11. Section 1846.670-5 is revised to read as follows:

1846.670-5 Forms.

An electronic copy of the DD Form 250 may be downloaded from the General Services Administration's Forms Library at <http://www.gsa.gov/portal/category/100000>.

12. In 1846.672-1, paragraphs (a)(1), (b), and (c) are revised to read as follows:

1846.672-1 Preparation Instructions.

(1) Dates shall include nine spaces consisting of the four digits of the year, the first three letters of the month, and two digits for the date (e.g., 2012SEP24).

(b) *Classified information.* Do not include classified information on the MIRR. MIRRs must not be classified.

(c) *Block 1 – PROCUREMENT INSTRUMENT IDENTIFICATION (CONTRACT NUMBER)*

Enter the ten-character, alpha-numeric procurement identifier of the contract.

(h) *Block 6 -- INVOICE.*

The contractor may enter the invoice number and actual or estimated date on all copies of the MIRR. When the date is estimated, enter an “E” after the date. Do not correct MIRRs to reflect the actual date of invoice submission.

(j) *Block 8 -- ACCEPTANCE POINT.* Enter an "S" for origin or "D" for destination as specified in the contract as the point of acceptance.

(k) *Block 9 -- PRIME CONTRACTOR.* Enter the Commercial and Government Entity (CAGE) code and address.

. In section 1846.672, the first sentence of paragraph (r)(1)(i) is amended by removing the phrase “Federal” and adding it its place the phrase “national” and removing the phrase “(FSN)” and adding in its place the phrase “(NSN)” .

j. In section 1846.672, paragraph (r)(3) is revised by replacing “Command” with “Agency”.

k. In section 1846.672, paragraph (r)(4)(ii) is revised by replacing “FSN” with “NSN”.

l. In section 1846.672, paragraph (r)(4)(v) is revised by replacing “FSN” with “NSN”.

m. In section 1846.672, paragraph (r)(4)(xi) is revised by replacing “shall” with “will”.

1846.672-5 [Removed]

13. Section 1846.672-5 is removed.

1846.672-6 and 1846.672-7 [Redesignated as 1846.672-5 and 1846.672-6]

Sections 1846.672-6 and 1846.672-7 are redesignated as 1846.672-5 and 1846.672-6.

14. Section 1846.674 is revised to read as follows:

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246-72, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables, even if the deliverables are not separately priced. The clause is not required for —

- (1) Contracts awarded using simplified acquisition procedures;
- (2) Negotiated subsistence contracts; or
- (3) Contracts for which the deliverable is a scientific or technical report. Insert number of copies and distribution instructions in paragraph (a).

PART 1851 – USE OF GOVERNMENT SOURCES BY CONTRACTORS

15. The authority citation continues to read as follows:

AUTHORITY: 42 U.S.C. 2473(c)(1).

1851.102-70 [Removed and Reserved]

16. Remove and reserve section 1851.102-70..

PART 1852 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. The authority citation continues to read as follows:

AUTHORITY: 42 U.S.C. 2473 (c)(1).

18. Section 1852.215.77 is amended by adding paragraphs (c), (d), and (e) to read as follows:

1852.215-77 Preproposal/Pre-Bid Conference.

PRE-PROPOSAL/PRE-BID CONFERENCE**[XX/XX]**

(c) Offerors, individuals, or interested parties who plan to attend the pre-proposal/pre-bid conference must provide the Contracting Officer in writing, at a minimum, full name of the attendee(s), identification of nationality (U.S. or specify other nation citizenship), Lawful Permanent Resident Numbers in the case of foreign nationals, affiliation and full office address/phone number. Center-specific security requirements for this pre-proposal/pre-bid conference will be given to a company representative prior to the conference or will be identified in this solicitation as follows: (fill-in). Examples of specific identification information which may be required include state driver's license and social security number. Except for foreign nationals, the identification information must be provided at least (fill-in) working days in advance of the conference. This information shall be provided at least (fill-in) working days in advance of the conference for foreign nationals due to the longer badging and clearance processing time required. However, the Center reserves the right to determine foreign nationals may not be allowed on the Government site. The Government is not responsible for offerors' inability to obtain clearance within sufficient time to attend the conference. Due to space limitations, representation of any potential Offeror may not exceed (fill-in) company representatives/persons per Offeror. Any "lobbying firm or lobbyist" as defined in 2 U.S.C. 1602(9) and (10), or any Offeror represented by a lobbyist under the Lobbying Disclosure Act of 1995 shall be specifically identified.

(d) Visitors on NASA Centers are allowed to possess and use photographic equipment (including camera cell phones) and related materials EXCEPT IN CONTROLLED AREAS. Anyone

desiring to use camera equipment during the conference should contact the Contracting Officer to determine if the site(s) to be visited is a controlled area.

(e) The Government will respond to questions regarding this procurement provided such questions have been received at least five (5) working days prior to the conference. Other questions will be answered at the conference or in writing at a later time. All questions, together with the Government's response, will be transmitted to all solicitation recipients via the government-wide point of entry (GPE). In addition, conference materials distributed at the preproposal/pre-bid conference will be made available to all potential offerors via the GPE using the NAIS Electronic Posting System.

(End of provision)

19 Section 1852.215-81 is amended by:

- a. Paragraph (a) is amended by removing the chart and replacing it to read;
- b. Paragraph (b) is amended by adding a sentence at the end of the paragraph.
- b. Paragraph (c) is revised.

The revisions read as follows:

1852.215-81 Proposal Page Limitations.

(a) ***

| Proposal Section (List each volume or section) | Page Limit (Specify limit) | [Proposal Subsection] (List each subsection) |
|--|--------------------------------------|---|
| | | (e.g. Offeror's Subcontracting Plan should not exceed 20 pages) |
| | | |
| | | |
| | | |

(b) *** Other limitations/instructions identified as follows: (fill-in, if there are other limitations/ instructions).

(c) Identify any exclusions to the page limits that are excluded from the page counts specified in paragraph (a) of this provision (e.g. title pages, table of contents) as follows: (fill-in). In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(End of provision)

20. Section 1852.234-1 is amended as follows:

a. Paragraph (a) is amended by adding the phrase “(current version at time of solicitation).”

After the word “Systems” at the end of the paragraph.

b. Paragraph (b)(1)(iii) and paragraph (b)(1)(vii).

The revisions read as follows:

1852.234-1 Notice of Earned Value Management System.

(b) ***

(1)***

(iii) Provide a matrix that correlates each guideline in ANSI/EIA 748 (current version at time of solicitation) to the corresponding process in the offeror’s written management procedures;

(vii) If the value of the offeror’s proposal, including options, is \$50 million or more, provide a

schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. Guidance can be found in the Department of Defense Earned Value Management Implementation Guide (<https://acc.dau.mil/CommunityBrowser.aspx?id=19557>) as well as in the National Defense Industrial Association (NDIA) Earned Value Management Systems Acceptance Guide (<http://www.ndia.org/divisions/divisions/procurement/pages/programsystemcommittee.aspx>).

21. Section 1852.234-2 is amended as follows:

- a. By revising paragraph (a)(2) ;
- b. The first sentence in paragraph (b) is amended by removing the phrase “cost/schedule control system” and adding “EVMS” in its place;
- c. Paragraph (c) is amended by adding the sentence “See the NASA IBR Handbook (<http://evm.nasa.gov/handbooks.html>) for guidance.” at the end of the paragraph:

The revisions read as follows:

1852.234-2 Earned Value Management System.

(a) ***

(2) Earned Value Management (EVM) procedures that provide for generation of timely, accurate, reliable, and traceable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the data requirements descriptions in the contract.

Section 1852.241-70 [Removed and Reserved]

22. Remove and reserve section t 1852.241-70

23. In § 1852.246-72, Material Inspection and Receiving Report, paragraph (a) is revised to read as follows:

1852.246-72 Material Inspection and Receiving Report.

(a) At the time of each delivery to the Government under this contract, the Contractor shall prepare and furnish a Material Inspection and Receiving Report (DD Form 250 series). The form(s) shall be prepared and distributed as follows:_____

_____ (Insert number of copies and distribution instructions.)
